

LETTER OPINION
98-L-138

September 9, 1998

Mr. Nevin Van de Streek
Minot City Attorney
PO Box 1697
Minot, ND 58702-1697

Dear Mr. Van de Streek:

Thank you for your letter asking whether Minot city ordinances relating to building, fire, electrical, and plumbing, by their own force, apply to buildings owned by the state of North Dakota located within the city. You also inquire whether state enforcement authority of state codes on those subjects may be delegated to a city, or whether the state and a city may, by a joint powers agreement, agree on enforcement of such codes.

I recently determined that city zoning ordinances do not govern or control property owned by the North Dakota State Fair Association. Letter from Attorney General Heidi Heitkamp to City Attorney Nevin Van de Streek (April 6, 1998). Similarly, as a general rule, state-owned buildings or structures located within municipal limits are not subject to municipal building codes or ordinances. 7A Eugene McQuillin, The Law of Municipal Corporations § 24.513.05, at 112 (3d. ed. 1998).

This office previously issued an opinion to the Bismarck city attorney concerning the application of Bismarck municipal ordinances to state buildings and property located within the city of Bismarck. Quoting various legal encyclopedic sources, that opinion noted that a municipal ordinance does not apply to the state, and property of the state is exempt from municipal regulation in the absence of waiver by the state of its right to regulate its own property, which waiver will not be presumed. Most cases researched at that time related to the regulation of buildings and related matters such as plumbing codes. The general rule of law noted was that the state may not be subordinated to ordinances of a city. The Attorney General concluded that "it is our opinion that city ordinances of the city of Bismarck do not apply to any activity of the state in its governmental or proprietary capacity." 1972-74 N.D. Op. Att'y Gen. 457, 458. Based on the above opinions, and the authorities cited therein, it is my opinion that the building-related ordinances of a city do not apply, by their own force, to property and buildings owned by the state of North Dakota.

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The State Fire Marshal is directed to make rules not inconsistent with the Century Code for the prevention of fires. N.D.C.C. § 18-01-04. Pursuant to that section, the State Fire Marshal has adopted a State Fire Code which includes, with certain exceptions, the provisions of the State Building Code for fire-safe construction and operation as provided in N.D.C.C. § 54-21.3-03, and the provisions of the Uniform Fire Code, with appendices, of the International Conference of Building Officials. N.D. Admin. Code § 10-07-01-04(1). The State Fire Marshal may enforce all the laws of the state providing for the prevention of fires. N.D.C.C. § 18-01-02(1).

The annual inspection for fire prevention purposes for all state buildings, except certain state institutions the State Fire Marshal is required to annually inspect, must be made by the fire department of the city in which the institution or building is located, and a report must be prepared based on the findings of the fire inspection. N.D.C.C. § 18-08-12. The fire inspection report must contain specifications of any violations and must be submitted to the responsible agency with a copy of the report to the State Fire Marshal. Id. For purposes of N.D.C.C. § 18-08-12, a "fire inspection" is a procedure performed in accordance with standards set forth in the Uniform Building Code, or the Code of the National Fire Protection Association. Because a specific statute requires inspection of state buildings by the local fire department or fire protection district, no delegation is needed for city fire inspections of state buildings located within cities (or within fire protection districts).

The State Electrical Board is required to adopt rules for electrical wiring and equipment and all such wiring and equipment must comply with the rules. N.D.C.C. § 43-09-21. The rules of the National Electrical Code and the National Electrical Safety Code approved by the American National Standards Institute are prima facie evidence of approved methods of electrical construction. Id. A municipality may make more stringent requirements. Id.

The State Electrical Board must provide inspection for all electrical installations. N.D.C.C. § 43-09-22. Cities may make provisions for inspection of electrical work done within their corporate limits and a city inspector must register the inspector's name with the board within ten days after appointment. Id. Pursuant to N.D.C.C. § 43-09-21, the State Electrical Board has adopted electrical wiring standards appearing in N.D. Admin. Code art. 24-02. The board has

adopted the 1996 edition of the National Electrical Code and the 1994 edition of the Life Safety Code NFPA No. 101. N.D. Admin. Code § 24-02-01-02(4). The board has also required all electrical installations, including new installations and additional work on old installations made in the state to have an electrical wiring certificate executed by a licensed electrician. N.D. Admin. Code § 24-02-01-19(1). The electrician must file the certificate along with inspection fees with the State Electrical Board pursuant to N.D. Admin. Code § 24-02-01-19(5). The State Electrical Board shall provide inspection for all electrical installations, and inspectors authorized by the board may condemn installations hazardous to life and property or may order specific corrections to be made. N.D.C.C. § 43-09-22. If the State Electrical Board inspects, it applies the State Electrical Code. State law permits a city to inspect electrical work. If a city does so on state buildings, it may apply only the requirements the State Electrical Board has adopted. Delegation is therefore irrelevant.

The State Board of Plumbing must formulate a state plumbing code which must contain the minimum basic standards for plumbing, drainage, and ventilation of plumbing in buildings of all classes. N.D.C.C. § 43-18-09. The State Board of Plumbing must make provision for inspection of plumbing installations or alterations to public buildings and installations in newly constructed dwelling units. N.D.C.C. § 43-18-17.3. The State Plumbing Code appears in N.D. Admin. Code art. 62-03. Political subdivisions may provide for inspection of plumbing work done within their jurisdictional limits, N.D.C.C. § 43-18-17.3, in accord with the State Plumbing Code or a city ordinance which may set higher standards. N.D.C.C. § 40-05-01(25). If the State Board of Plumbing inspects, it applies the State Plumbing Code. State law permits a city to inspect plumbing work. N.D.C.C. § 40-05-01(25). If it does so on state-owned buildings, it may apply only the State Plumbing Code, and not any higher standard it may have adopted. Delegation is therefore irrelevant.

The State Building Code consists of the Uniform Building Code and the Uniform Mechanical Code with a certain exception. N.D.C.C. § 54-21.3-03(1). The director of the Office of Management and Budget is required to adopt rules to implement and periodically update the code and may adopt rules to amend the code. Id. Pursuant to that authority, the director of the Office of Management and Budget has adopted N.D. Admin. Code ch. 4-08-01. The rules implementing the State Building Code apply to all state and local government public buildings. N.D. Admin. Code § 4-08-01-03(3). If a city, township,

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or county elects to administer and enforce a building code, that political subdivision shall adopt and enforce the State Building Code. N.D.C.C. § 54-21.3-03(3). However, the political subdivision may amend the State Building Code to conform to local needs. Id.

Although N.D.C.C. § 54-21.3-03 specifies the content of the State Building Code and requires that the director of the Office of Management and Budget adopt rules to implement it and update it, neither the statute nor the rules adopted provide for state level inspections nor enforcement of the State Building Code. This office has previously determined that no state law or rules provide for state level inspections or enforcement of the State Building Code. 1979 N.D. Op. Att'y Gen. 77, 78. Governing bodies such as cities that elect to enforce a building code must enforce the State Building Code with amendments to conform to local needs and the cities may designate an enforcement agency. N.D.C.C. §§ 54-21.3-03(3) and 54-21.3-05. Only the State Building Code is applicable to state-owned buildings. Therefore, without enforcement authority at the state level, there is no authority to delegate concerning the enforcement of the State Building Code for state-owned buildings.

N.D.C.C. § 54-40.3-01(2) authorizes any city to enter into a joint powers agreement with any agency of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. The governing body or officer of the state agency must approve the agreement and the Attorney General must determine its legal sufficiency. It is therefore my opinion that state agencies may enter into joint powers agreements with cities for the performance of building or safety code inspection and enforcement. However, as discussed above, it does not appear a joint powers agreement would be required to authorize local inspections of state-owned buildings. Further, it is my opinion that a joint powers agreement could not bind the state to meet local city ordinances which are stricter than state-imposed fire, building, electrical, or plumbing codes.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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